

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**WAYNE RIESBERG  
Audubon County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2015-AFO- **12**

TO: Wayne Riesberg  
25217 Jade Avenue  
Carroll, Iowa 51401

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Wayne Riesberg for the purpose of resolving manure application violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements: Relating to legal requirements:**

Alison Manz, Field Office 4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Phone: 712/243-1934

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. On November 17, 2014, DNR Field Office 4 received a complaint regarding land application of manure to a field located in Section 17, Viola Township, Audubon County, Iowa. The complainant stated on November 12 and 13, 2014, that manure was surface applied without complying with separation distance requirements.

2. On November 20, 2014, Alison Manz, DNR Field Office 4 environmental specialist, investigated the complaint. She arrived at the field subject to the complaint and noted manure had been surface applied on a field within 100 feet of the residence located at 1249 Oriole Avenue, Audubon and within 10 feet from a drinking water well and an unnamed tributary of the East Nishnabotna River.

3. Ms. Manz spoke with Doug Riesberg. He stated that his father Wayne Riesberg was the manure applicator. Wayne Riesberg is a certified commercial manure applicator. The manure originated from the Roanoke hog confinement also located in Audubon County. Doug Riesberg stated that the application rate was 5,300 gallons per acre and that Wayne Riesberg was attempting to inject the manure; however, because of the frozen ground, the blades were breaking.

4. On November 24, 2015, Doug Riesberg contacted DNR Field Office 4 and stated that the manure had been incorporated on November 22, 2015.

5. On December 1, 2015, DNR issued a Notice of Violation letter to Wayne Riesberg for failing to follow the manure separation distances. The letter informed Mr. Riesberg that the violations would be referred for further enforcement.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. 567 IAC 65.3(3)"a" states the required separation distance for liquid manure application from a confinement feeding operation from a residence not owned by the titleholder, a business, a church, a school or a public use area is 750 feet. The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school or public use area. During the investigation on November 20, 2014, DNR Field Office 4 personnel determined that Mr. Riesberg had not complied with the separation distance requirements from a residence. DNR Field Office 4 personnel determined that manure had been surface

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applied within 100 feet of the residence. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.3(3)"g" states a person shall not apply manure on land within 200 feet from a designated area unless one of the following applies: 1) the manure is land-applied by injection or incorporation on the same date the manure was land-applied or 2) an area of permanent vegetation cover exists for 50 feet surrounding the designated area. 567 IAC 65.1 defines designated area as a known sinkhole, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, or water source. During the investigation on November 20, 2014, DNR Field Office 4 personnel determined that Wayne Riesberg had not complied with the separation distance requirements from a drinking water well and a water source. DNR Field Office 4 personnel determined that manure had been surface applied within 10 feet of a drinking water well and within 10 feet of an unnamed tributary of the East Nishnabotna River. The above-mentioned facts indicate violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Wayne Riesberg agrees to do the following:

1. Mr. Riesberg shall comply with all separation distance requirements for future land applications of manure; and
2. Mr. Riesberg shall pay an administrative penalty in the amount of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

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Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Riesberg gained an economic benefit by avoiding the costs associated with proper manure incorporation; however, any economic benefit was lost since Mr. Riesberg returned to the field and incorporated the manure following the investigation. Therefore, no economic benefit is being assessed.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The potential for a water quality violation resulted from the manure not being incorporated at the time of application. Separation distance requirements are established to ensure the protection of human health, personal property and natural resources. Mr. Riesberg’s failure to comply with the separation distance requirements threatens the integrity of the water quality program. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Mr. Riesberg has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. Mr. Riesberg has been a certified manure applicator since 2004 and should be aware of the separation distance requirements. Therefore, \$1,000.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Wayne Riesberg. For that reason Wayne Riesberg waives the right to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 29<sup>th</sup> day of  
April, 2015.

  
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Wayne Riesberg

Dated this 29<sup>th</sup> day of  
April, 2015.

Kelli Book, Field Office #4, EPA, VIII.D.2.b